

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS CWALT,
INC., *et al.*,

Plaintiffs,

vs.

SALMA KHAN, *et al.*,

Defendants.

2:16-cv-01177-JCM-VCF

**ORDER GRANTING ENLARGEMENT OF
TIME TO SERVE AND SERVICE BY
PUBLICATION**

Before the Court are SFR's Motion to Serve Cross-Defendant Salma Khan by Publication and Motion to Enlarge Time to Serve Summons and Cross-Claim (ECF Nos. 34 and 35).

SFR asks this court to permit service of the Summons and Complaint against Khan by publication. *Id.* Plaintiff also seeks to extend the time in which to effectuate service under Federal Rule of Civil Procedure 4(m). *Id.* No opposition has been filed to the Motion to Serve Salma Khan by Publication and Motion to Enlarge Time to Serve Summons and Cross-Claim (ECF Nos. 34 and 35).

Service By Publication

Pursuant to Fed. R. Civ. P. 4(e)(1), "an individual – other than a minor, an incompetent person, or a person whose waiver had been filed – may be served in a judicial district of the United States by following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Under Rule 4(e)(1) of the Nevada Rules of Civil Procedure, "when the person on whom service is to be made resides out of the state, or has departed

1 from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid
2 the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge
3 thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action
4 exists against the defendant in respect to whom the service is to be made, and that the defendant is a
5 necessary or proper party to the action, such court or judge may grant an order that the service be made
6 by the publication of summons.”

7 SFR asserts that after diligent effort, it is unable to serve Khan within the states of Nevada and
8 California. (ECF No. 34 at 4). In support of this assertion, SFR provided the court with an affidavit of
9 attempted service. (ECF No. 34-1 at 2). The last known addresses for Khan are 7849 Meandering Light
10 Ave., Las Vegas, NV 89131; 8521 Copper Falls Dr., Las Vegas, Nevada 89129; 11622 Harrington St.,
11 Bakersfield, CA 93311; 10001 Venice Blvd. Apt. 402, Los Angeles, CA 90034. *Id.* Service at these
12 addresses were unsuccessful. *Id.*

13 The court finds that pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1), permitting
14 service by publication of the Summons and Complaint on Khan is warranted. Pursuant to Rule 4(e)(1)(iii),
15 the publication must be made in a newspaper, published in the State of Nevada, for a period of 4 weeks,
16 and at least once a week during said time. Nev. R. Civ. P. 4(e)(1)(iii).

17 **Extension For Service**

18 Fed. R. Civ. P. 4(m) requires a defendant to be served within 90 days after the complaint is filed.
19 If “the plaintiff shows good cause for the failure [to serve a defendant within that time-frame], the court
20 must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m).

21 Plaintiff must effectuate service on Khan by May 5, 2016. Fed. R. Civ. P. 4(m). SFR asserts that
22 an additional 60 days is required to effect service by publication, and asks this court to extend the 4(m)
23 deadline. *Id.*

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1 Given that SFR has demonstrated “good cause” for its failure to effectuate service and has provided
2 support for its request for an extension, the court will extend the 4(m) deadline until May 5, 2017. *See*
3 Fed. R. Civ. P. 4(m).

4 Accordingly, and for good cause shown,


5 IT IS HEREBY ORDERED that SFR’s Motion to Serve Cross-Defendant Salma Khan by
6 Publication and Motion to Enlarge Time to Serve Summons and Cross-Claim (ECF Nos. 34 and 35) are
7 GRANTED.

8 IT IS FURTHER ORDERED that SFR is permitted to serve Khan by publication. A copy of the
9 Summons and Complaint must be mailed to Khan at her last known addresses by certified U.S. Mail,
10 return receipt requested.

11 IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1)(i)
12 and (iii), the Summons in this action must be served by publication in a newspaper, published in the state
13 of Nevada, for a period of four weeks and at least once a week during that time.

14 IT IS FURTHER ORDERED that the deadline to effect service of process is extended up to and
15 including May 5, 2017.

16 DATED this 1st day of March, 2017.

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19 CAM FERENBACH
20 UNITED STATES MAGISTRATE JUDGE
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